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***IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA***

***FIRST APPELLATE DISTRICT***

***DIVISION THREE***

THE PEOPLE,

Plaintiff and Respondent,

v.

ANNALIZA NOES OLIMPIADA,

Defendant and Appellant.

A125269

(City & County of San Francisco  
Super. Ct. No. 2377079)

Annaliza Noes Olimpiada appeals the revocation of her probation and contends there was insufficient evidence to show that she knew she was violating the law when she was discovered inside a condemned building. We disagree and affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND**

In October 2008, Olimpiada entered a guilty plea to one count of misdemeanor second degree burglary as part of a negotiated disposition, and additional counts were dismissed on the prosecutor's motion. Imposition of sentence was suspended, and Olimpiada was placed on three years' unsupervised probation. One of the conditions of her probation was that she obey all laws.

A motion to revoke Olimpiada's probation was filed a few months later, on the ground that she committed a misdemeanor when she was found inside property declared to be an imminent and substantial hazard by the San Francisco Department of Building Inspection. The property was located at 80 Julian Street in San Francisco and Olimpiada

was a lessee.<sup>1</sup> In September 2008, after city officials determined the building was unoccupied, an emergency order was posted on the building, along with a conspicuous red hazard placard that stated the building was “Unsafe.” Olimpiada was served with a copy of the emergency order by certified mail. When a police officer checked the building in January 2009, the posted copy of the emergency order had been removed from the front of the building, and Olimpiada was discovered inside with two dogs, furniture, food and bedding.

Following an evidentiary hearing, the court found Olimpiada had violated her probation and ordered her to serve one year in county jail, with credit for 87 days served. After Olimpiada initially failed to surrender to serve her jail sentence, the court adjudged her in contempt and sentenced her to serve three days in jail, consecutive to the one-year sentence imposed for the probation violation, with credit for two days of time served. Olimpiada timely appealed.

## **DISCUSSION**

A trial court may revoke probation under Penal Code section 1203.2 “whenever it has reason to believe that the probationer is violating any of the conditions of his probation or is engaging in criminal activities.” (*People v. Hayko* (1970) 7 Cal.App.3d 604, 609.) A violation must be proved by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441.) Absent an abuse of discretion, a trial court’s decision to revoke probation will not be disturbed on appeal. (*People v. Angus* (1980) 114 Cal.App.3d 973, 987-988.)

Section 103A of the San Francisco Municipal Building Code provides, in relevant part: “Any person . . . who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions of this code, shall be guilty of a misdemeanor . . . .” (Ch. 1A, § 103A.) Failure to comply with an order to

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<sup>1</sup> During the probation revocation hearing, her counsel advised the court that Olimpiada had lived there for two years.

vacate a property determined to be unsafe constitutes a misdemeanor as set forth in section 103A. (§ 102A.11.2.)

Olimpiada contends her due process rights were violated because there is no proof she was personally notified that 80 Julian Street was under an emergency order prohibiting entry, and the order posted on the building had been removed before the police arrived and found her inside. It thus appears the gravamen of her claim is that there was insufficient evidence for the court to conclude she knowingly occupied a condemned building in violation of the San Francisco Municipal Code. Even if Olimpiada's due process rights could be implicated by a lack of notice, the evidence does not support her claim.

The city's chief housing inspector testified that three notices of violation had previously been issued on 80 Julian Street. The inspector personally told Olimpiada before the "red-tag" order was issued that the building was unsafe and would be ordered vacated if electrical service was not restored. The inspector was present when the building was boarded up and the emergency notice and a hazard placard were posted to prohibit entry.<sup>2</sup> Finally, the inspector also testified that the division's records included a declaration stating that Olimpiada was sent a copy of the emergency order by certified mail. This evidence coupled with the officer's discovery of Olimpiada within 80 Julian Street was sufficient to support the trial court's finding that she violated the terms of her probation.

Olimpiada has not shown that the revocation of her probation was unsupported by sufficient evidence or an abuse of discretion. Olimpiada does not argue that there was a deficiency in the notice provided to her regarding her probation revocation proceeding.

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<sup>2</sup> The housing inspector testified that "an assortment of violations present in this building . . . made it an extreme imminent fire hazard" that posed "life safety hazards . . . to individuals not only occupying the building but any adjacent structures or individuals." The emergency notice was also recorded in October 2008.

(Cf. *United States v. Merchant* (9th Cir. 1985) 760 F.2d 963, 966, 968 [when probation was reinstated at a hearing without the presence of, or notice to, the defendant, evidence seized during subsequent probation search was suppressed].) No due process violation occurred in this case.

### **DISPOSITION**

The judgment is affirmed.

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Siggins, J.

We concur:

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Pollak, Acting P. J.

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Jenkins, J.